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**IOWA UTILITIES BOARD**  
**General Counsel and Policy Sections**

Docket Nos.: WRU-2014-0013-0004

Utility: Ironwood Development, LC and  
Professional Property  
Management, Inc.

File Date/Due Date: September 11, 2014-N/A

Memo Date: October 16, 2014

**TO:** The Board

**FROM:** Parveen Baig, Cecil Wright

**SUBJECT:** Request for waiver of 199 IAC 20.3(1)"b"

**I. Background**

On September 11, 2014, Ironwood Development, LC (Ironwood), and Professional Property Management, Inc. (PPM), (collectively, Applicants), filed with the Utilities Board (Board) a request to waive the individual metering requirements in 199 IAC 20.3(1)"b" to allow master metering at an apartment complex with two multi-occupancy buildings in Altoona, Iowa. Ironwood is the owner of the two apartment buildings being constructed and PPM will manage the properties. Applicants state that they have a long track record of designing and managing energy efficient and cost effective residential rental properties and Applicants want to utilize energy savings strategies at the apartment buildings in Altoona. To utilize the energy saving strategies at the two apartment buildings, according to Applicants, will require master metering of the two buildings.

On September 30, 2014, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed a response to the waiver request. On October 1, 2014, MidAmerican Energy Company (MidAmerican) filed a response to the waiver request. On October 8, 2014, Applicants filed a reply to MidAmerican's response to the waiver request.

**II. Request for Waiver**

Applicants provided a Technical Report as Exhibit B to the waiver request that supports the request to provide electricity to two apartment buildings through a master meter. Applicants state that master metering will allow them to recover the costs associated with implementing energy efficiency strategies such as: (1) high performance windows, sliding glass doors and building insulation systems; (2) installing high efficiency LED and fluorescent lighting systems and controls; (3) installing high efficiency appliances; (4) installing high efficiency mini-split air source heat pumps for residential apartments; and (5) providing low water flow

showerheads and aerators in kitchen and bathroom sink faucets. Applicants state that if master metering is not used, they will not be able to recover the initial investment in these energy efficiency strategies, totaling approximately \$300,000, which would cause an undue hardship and could affect their ability to implement the energy efficiency strategies.

Applicants note that 199 IAC 20.3(1)"b" establishes the general rule that prohibits master metering for multi-occupancy premises within a single building where units are separately rented or owned and subparagraph 199 IAC 20.3(1)"b"(4) creates an exception where the "benefits of the individual metering (reduced and controlled energy consumption) are more effectively accomplished through a master meter arrangement." Applicants state that master metering the apartment buildings in Altoona would allow for greater reduction and controlled energy consumption than individual metering.

Applicants address the four criteria described in 199 IAC 1.3 which must be satisfied for a waiver to be granted by the Board. Those four criteria are: (1) the application of the rule would pose an undue hardship on the person for whom the waiver is requested; (2) the waiver would not prejudice the substantial legal rights of any person; (3) the provisions of the rule subject to a petition for waiver are not specifically mandated by statute or another provision of law; and (4) substantially equal protection of public health, safety, and welfare will be afforded by means other than that prescribed in the rule for which the waiver is requested.

1. Applicants argue that not allowing master metering at the two apartment buildings would increase energy consumption at the buildings and would cause Applicants undue hardship. Applicants suggest that the Board adopted paragraph 199 IAC 20.3(1)"b" to promote energy efficiency. Docket No. RMU-78-7, In re: Master Metering of Gas and Electric Service, "Order Adopting Rules" (issued 9/4/78). Applicants state that traditionally individual metering was used to make the tenant financially responsible for electric use which would result in more efficient use of electric energy. Applicants state that this traditional view has not resulted in maximum energy efficiency for two reasons. First, a housing tenant does not have an incentive to properly maintain appliances and fixtures and over time the appliances become less energy efficient, and a property owner does not have financial incentive to maintain energy efficient appliances and fixtures since any savings flows through to the tenant. Second, it has been shown that energy savings are achieved by simply providing energy efficient devices to the tenant. However, again since any savings flows through to the tenant there is no incentive for the property owner to purchase and maintain energy efficient appliances and fixtures. Applicants suggest that this split incentive between the tenant and the property owner results in energy efficient appliances not being installed in multi-family housing developments.

Applicants state that the Technical Report shows that master metering solves these issues by allowing the property owner to recover its costs associated with

implementing energy efficient strategies. Applicants state they are committed to installing energy efficient building systems and appliances; however, the only way they can recover the additional costs of these systems and appliances is through a master meter arrangement which allows them to receive the financial benefit from lower energy usage.

Applicants suggest that other multi-occupancy property owners will not seek a similar waiver because the Applicants are unique since they incorporate energy saving features as part of the initial design. This design provides energy savings of up to forty percent and meets or exceeds applicable Energy Star multi-family housing energy performance targets. Without the waiver, Applicants will not recover the cost of the energy savings strategies and this would be an undue hardship on Applicants.

2. Applicants state they are unaware of any substantial legal rights of any person that would be prejudiced by the requested waiver. Applicants state that the Technical Report shows that energy conservation is better achieved through master metering and the cost associated with electric usage will be recovered as an undefined portion of the rent paid by tenants and will not exceed the amount billed to the owner by the utility at the master meter. Applicants state that master metering will not affect the tenants' right to public support programs since the Low Income Energy Assistance Program (LIHEAP) is not available where energy usage is an unidentified portion of the rent. In addition, the income requirement to qualify for the Altoona apartments exceeds the income requirement for LIHEAP. Applicants state that disconnection rules would not apply to tenants since the cost of heating is part of the rent payment.

3. Applicants state that they are unaware of any statute or provision of law that mandates individual metering for multi-occupancy premises. The Board adopted the requirements in 199 IAC 20.3(1)"b" under the Board's general rule-making authority in Iowa Code §§ 476.1 and 476.2. Applicants point out that neither section of the Iowa Code mandates individual metering.

4. Applicants state that 199 IAC 20.3(1)"b" contemplates that public health, safety, and welfare may be afforded by master metering in certain situations since this paragraph provides for exceptions to the individual metering requirement. Therefore, granting the waiver will satisfy requirement four of rule 199 IAC 1.3.

### **III. Consumer Advocate Response**

Consumer Advocate states that it does not oppose the waiver request. Consumer Advocate suggests that Applicants do not need a waiver since the information provided by Applicants supports a finding that the proposed energy efficiency measures at the two apartment buildings meet the requirements for the exception to individual metering in 199 IAC 20.3(1)"b"(4) where the benefits of

individual metering are more effectively accomplished through a master meter arrangement.

Consumer Advocate states that the Board could find that Applicants have presented sufficient information and justification to find the requirements for a waiver in 199 IAC 1.3 has been satisfied. Consumer Advocate states that the information provided in the Technical Report regarding energy efficiency benefits made possible by master metering is compelling. As an alternative, Consumer Advocate suggests the Board could find that no waiver is required since the project meets the exception to the individual metering requirement as described above. Consumer Advocate states that it is important that the Board's rules accommodate and not hinder efforts by owners of multi-occupancy residential buildings to make the buildings as energy efficient as possible. Consumer Advocate suggests that the split incentives between tenants and owners described in the Technical Report is a barrier to meaningful energy efficiency gains in multi-occupancy buildings. A master metering arrangement would resolve this conflict and provide economic incentives for the owner to pursue energy efficient design and construction.

#### **IV. MidAmerican Response**

MidAmerican states the Board does not often grant permanent waivers of Board rules, and as provided in 199 IAC 1.3 any such waiver is subject to cancellation upon appropriate notice and opportunity for hearing. MidAmerican states the reason for the waiver request is to allow for greater reduction and control of energy consumption through master metering. MidAmerican agrees with Applicants about the split incentive between the owners and tenants of multi-occupancy housing. However, MidAmerican suggests that Applicants have not provided sufficient information for the Board to grant the waiver.

MidAmerican points out that Applicants claim that "in order to make the purchase of high efficiency, Energy Star rated equipment and other energy conservation features economically feasible, the Applicants would like to implement master metering"; however, Applicants do not provide specific examples or cite specific pages in the Technical Report to explain the basis for this assertion. MidAmerican states that the Technical Report does not: (1) set forth how energy savings will be measured to ensure that the energy efficiency measures are effective; (2) explain whether it is reasonable to charge \$30-\$45 per unit in electric charges based on apartment size in relation to the commercial rate for electricity; and (3) provide the typical usage for a one bedroom apartment and compare that usage with the savings and explain whether this rate was based on an average residential rate or the commercial rate for electric usage. Finally, MidAmerican states that it is not clear whether Applicants are proposing to master meter both buildings together or separately.

MidAmerican states that it does not want to discourage energy efficiency measures from being installed in multi-family housing, but would like the Board to

request additional information regarding how the master meter will encourage energy savings over individual metering. MidAmerican states that Applicants have not explained how energy efficiency will be impacted by the removal of the incentive for individuals to conserve energy within their own apartments if the complex is master metered. MidAmerican requests the Board point out that Applicants should not profit from over recovery of unreasonable energy charges. In addition, MidAmerican requests that Applicants be required to explain how granting of this waiver request will not result in *carte blanche* authority for all multi-family units to master meter.

## **V. Applicant's Response to MidAmerican**

Applicants state the information requested by MidAmerican is already contained in Applicants' waiver request and the Technical Report attached as Exhibit B. Applicants state that master metering makes energy conservation features more feasible for property owners by allowing recovery of costs incurred when installing the energy efficient strategies. Applicants explain the split incentive problem with individual meters in their waiver request. The Technical Report also explains how master metering makes energy conservation more feasible than individual metering. Contrary to MidAmerican's assertions, the Technical Report sets forth how energy savings and strategies will be measured and verified. PPM will also use Energy Star Portfolio Manager or similar software to evaluate energy efficiency measures. MidAmerican's assertion that Applicants will charge \$30-\$45 per unit in electric charges is misplaced. This figure is used in the Technical Report as an example. Applicants do not yet know what rate they are going to charge tenants for energy use. Applicants need to work with MidAmerican to figure out what rate schedule will be applied to this property. If master metering is approved, tenant's energy use will be included as an unspecified portion of the tenant's rent pursuant to 199 IAC 20.3(1)(b). Predicted energy cost savings are based on residential rate for the tenant, not on the commercial rate. Permission is requested to master meter both apartment buildings together with one master meter.

MidAmerican believes that additional information should be provided regarding how master metering encourages energy savings. The Technical Report establishes that greater savings are achieved when the property owner receives the economic benefit instead of the tenant receiving the benefit. The installation of energy efficiency strategies will educate tenants on the importance of energy savings. The Applicants will implement the same educational strategies at this facility as they have done at other properties managed by PPM.

It is not the intent of the Applicants to profit from the rate charged for energy consumption. Electricity charges will be included as an unidentified portion of the rent. Applicants will work with MidAmerican to determine the appropriate rate schedule. The risk that other multi-occupancy property owners will seek a waiver, if the Board grants the waiver request, is minimal. Applicants are not seeking a

change of Board rules and Applicants are unique in that they incorporate energy saving features as part of their initial design.

The Applicants would be happy to schedule a conference with all parties to answer questions or address concerns.

## **VI. Legal Standards**

### **199 IAC 1.3**

In response to a request, or on its own motion, the board may grant a waiver from a rule adopted by the board, in whole or in part, as applied to a specific set of circumstances, if the board finds, based on clear and convincing evidence, that:

1. The application of the rule would pose an undue hardship on the person for whom the waiver is requested;
2. The waiver would not prejudice the substantial legal rights of any person;
3. The provisions of the rule subject to a petition for waiver are not specifically mandated by statute or another provision of law; and
4. Substantially equal protection of public health, safety, and welfare will be afforded by means other than that prescribed in the rule for which the waiver is requested.

### **199 IAC 20.3(1)"b"(4)**

The amount of all electricity delivered to multi-occupancy premises within a single building, where units are separately rented or owned, shall be measured on the basis of individual meter measurement for each unit, except in the following instances:

(4) Where individual metering is impractical. "Impractical" means: (1) where conditions or structural barriers exist in the multi-occupancy building that would make individual meters unsafe or physically impossible to install; (2) where the cost of providing individual metering exceeds the long-term benefits of individual metering; or (3) where the benefits of individual metering (reduced and controlled energy consumption) are more effectively accomplished through a master meter arrangement.

If a multi-occupancy building is master-metered, the end-user occupants may be charged for electricity as an unidentified portion of the rent, condominium fee, or similar payment, or, if some other method of allocating the cost of the electric service is used, the total charge for electric service shall not exceed the total electric bill charged by the utility for the same period.

## **VII. Staff Analysis**

Staff does not agree with Consumer Advocate that there is sufficient information provided by Applicants at this time to support the granting of the waiver to allow master metering at the two apartment buildings in Altoona. As pointed out by MidAmerican, staff believes additional information must be provided by the Applicants before the Board can make a decision regarding the waiver request. After additional information is filed with the Board staff may schedule a meeting as requested by the Applicants. Staff is recommending that the Board issue an order that requires Applicants to provide the following additional information:

1. Provide specific examples and explain the basis of the assertion that "in order to make the purchase of high efficiency, Energy Star rated equipment and other energy conservation features economically feasible, the Applicants would like to implement master metering."
2. Explain how energy savings will be measured to ensure that the energy efficiency measures are effective. Provide details of the methodology used to estimate savings.
3. Provide typical usage of each type of apartment and compare that usage with the savings projected with master metering versus individual metering.
4. Explain how energy efficiency will be affected by the removal of the incentive for individual renters to conserve energy within their own apartments if the apartment buildings are master metered and individual renters are not responsible for managing their individual energy usage and resulting individual bills.
5. Please clarify the statement "the Technical Report shows that master metering solves these issues by allowing the property owner to recover its costs associated with implementing energy efficient strategies." Does this mean that costs of implementing energy efficient strategies would be recovered by charging the renters an additional charge for these measures? *(If so, what will be the amount of the charge per unit? SKT)* Explain why such a charge is reasonable?
6. Explain why costs of implementing energy efficient strategies at the proposed facility could not be recovered through an undisclosed portion of the rent if master metering is not allowed?
7. Explain what allocation method will be used to determine electricity costs allocated to individual renters?
8. Please explain your statement "not allowing master metering at the two apartment buildings would increase energy consumption at the buildings and would cause Applicants undue hardship." (a) Explain how the installation of individual meters, which is designed only to measure consumption, would increase energy consumption. (b) Explain how the method of measurement causes hardship to property owners?

9. Provide an estimate of how much it would cost to master meter the buildings versus installing individual meters at each rental unit. How do these metering costs compare to the overall capital costs for the project?

10. Explain how the Board can be assured that the total charge for electric service shall not exceed the total electric bill charged by the utility for the same period as required by 199 IAC 20.3(1)"b"(4). (*How will it be handled if it does? NAW*)

11. What is the total estimated electric monthly bill for the property using a single master meter? How does this estimate compare to the total for individual bills?

12. Page 3 of the Technical Report discusses master metering for gas usage at this property. Explain whether one or two gas master meters will be used for the development.

13. Explain the reasoning why installation of gas master meters at this facility does not require waiver of Board rules.

14. What rate schedule will be used for billing of gas master meter?

15. Explain the allocation methodology that will be used to allocate the master gas bill to individual tenants?

16. Figure 7.2, on page 17 of the Technical Report shows No Payback to the owners under three scenarios (Bundle 2, Bundle 3, and Bundle 2 w/supplemental) with tenant meter installation. Provide an estimate of energy savings and dollar savings to individual tenants under these scenarios.

## **RECOMMENDATION**

Board staff requests the Board to direct General Counsel to prepare an order for Board review that directs Applicants to provide the additional information described in this memorandum.

### **APPROVED**

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| /ciw   | <u>/s/ Elizabeth S. Jacobs</u> | <u>10-17-14</u><br>Date |
| See additional question P.8 Q.10             | <u>/s/ Nick Wagner</u>         | <u>10/20/14</u><br>Date |
| See additional question suggested on P.7 Q.5 | <u>/s/ Sheila K. Tipton</u>    | <u>10-17-14</u><br>Date |